

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 Frank Guinta) MUR 6440

6)
7 Friends of Frank Guinta and)
8 Bradley T. Crate in his official capacity as treasurer¹)

9)
10 Richard Guinta)

11)
12 Magdalene Virginia Guinta)
13)
14)

15 **SECOND GENERAL COUNSEL'S REPORT**

16 We recommend taking the following actions: (1) Enter into pre-probable cause

17
18 conciliation with Frank Guinta and Friends of Frank Guinta and Bradley T. Crate in his official
19 capacity as treasurer (the "Committee"); (2) Take no action as to Richard Guinta and Magdalene
20 Virginia Guinta other than send a caution letter with respect to violations of 2 U.S.C. §§ 441a
21 and 441f, and close the file as to them; (3) ; and
22 (4) Approve the appropriate letter.

23 **I. INTRODUCTION**

24 On August 30, 2011, the Commission found reason to believe that former-Representative
25 Frank Guinta violated 2 U.S.C. § 441f when he contributed \$355,000 to the Committee using his
26 parents' funds, and that the Committee violated 2 U.S.C. §§ 434(b) and 441a(f) by accepting the
27 excessive contribution and misreporting Rep. Guinta as its source.² We conducted an
28 investigation to determine whether the funds Rep. Guinta contributed were the personal funds of

¹ At the time of the Commission's reason to believe findings, Louis DeMato was the treasurer of Friends of Frank Guinta. Bradley T. Crate was named treasurer in an amended Statement of Organization filed on September 25, 2013.

² Rep. Guinta, who was first elected to Congress in 2010, lost his re-election bid in 2012.

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1 the candidate. Substantial credible evidence indicates they were not. We therefore recommend
2 that the Commission enter into pre-probable cause conciliation with Rep. Guinta and the
3 Committee.

4 **II. RESULTS OF THE INVESTIGATION**

5
6 **A. Background**

7 Based on information in financial statements that Rep. Guinta filed with the House Ethics
8 Committee, the Complaints allege that Rep. Guinta did not have \$355,000 to provide the
9 Committee during the 2010 election cycle;³ the Complaints assert therefore that Rep. Guinta
10 obtained the contributed funds from another source, in violation of the Act. Compl. ¶ 2, MUR
11 6363 (Sept. 1, 2010);⁴ Compl. at 1-2, MUR 6440 (Dec. 7, 2010); *see also* First Gen. Counsel's
12 Rpt. at 4 ("First GCR").

13 Rep. Guinta denied the allegations, asserting that the contributions were made with
14 personal funds. He provided an affidavit in support, stating that: "The source of all funds loaned
15 by me to the Committee was an account at Bank of America" that was "comprised of funds
16 which are an asset over which I had/have legal right of access or over which I had/have control."
17 Resp., Ex. A, Frank Guinta Aff. ¶¶ 5-6 (Jan. 20, 2011). He further stated, "I possess legal access
18 [to] the funds in the Account based upon an equitable interest, and pursuant to a specific
19 commitment and pledge to me from my parents that the funds in the Account were available to
20 me for my use for whatever purpose(s) I deemed appropriate." *Id.* ¶ 10. According to Guinta's

³ On May 15, 2010, Guinta filed a financial statement required for House candidates by the Ethics in Government Act ("EIGA"), 2 U.S.C. § 101 *et. seq.*, reporting his personal income and assets as his salary of \$72,000, two bank accounts valued at \$1,001-\$15,000 each, one bank account valued at \$14,001-\$50,000, and various stocks and mutual funds. *See* 2010 EIGA Statement (May 15, 2010). On July 23, 2010, Guinta filed an amended disclosure statement in which he included a previously unreported bank account with a value of \$250,000-\$500,000. *See* Amended 2010 EIGA Statement (July 23, 2010).

⁴ MUR 6363 was merged into MUR 6440.

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1 Committee. Despite our best efforts, we were unable to obtain voluntarily more than a partial
2 production of the records we sought. Nonetheless, as described further below, we conclude that
3 the substantial weight of the credible information obtained to date continues to support the
4 Commission's finding that there is reason to believe that Rep. Guinta and the Committee
5 violated the Act, and we now possess an adequate understanding of the nature and source of the
6 funds involved to proceed to pre-probable cause conciliation without expending further
7 investigative resources.⁶

8 **C. The Respondents' "Family Pot" Defense**

9 Following the Commission's reason-to-believe finding, the Respondents submitted a
10 document they styled a motion to dismiss, detailing their legal defense to the excessive
11 contribution and misreporting allegations. *See* RTB. Resp. (Dec. 21, 2011).⁷ Although
12 conceding that Rep. Guinta loaned or contributed funds to the Committee that were drawn from
13 his parents' bank account, the Respondents contend that the \$355,000 Rep. Guinta provided the
14 Committee nonetheless were his personal funds; the funds in the bank account were drawn from
15 a "family pot" — that is, a collection of shared family assets held solely in the name of Rep.
16 Guinta's parents and spread over several accounts, but available for the beneficial use of Rep.
17 Guinta and other family members "when needs arise." *Id.* at 1-3. According to Respondents, all
18 of the Guinta children "have regularly used the shared family resources for personal expenses,"
19 including "day-to-day living expenses." *Id.*

⁶ Based on the substantial evidence already in our possession, we see no need to seek to compel the Respondents to provide additional information supporting their own defensive theory if they do not wish to provide it voluntarily.

⁷ Respondents styled their post-reason to believe submission a Response to Request for Materials and Motion to Dismiss Matter(s) Under Review. Because the Commission does not engage in pre-probable cause motions practice, we treat the motion as a supplemental response and address the arguments and information submitted with that document in our analysis here.

1 Respondents further assert that Rep. Guinta was at least entitled to withdraw from the
2 family pot an amount equal to his personal contributions to it, including any appreciation that
3 would have accrued over time. *Id.* at 10-11. Respondents have provided documents identifying
4 a total of \$100,032.67 in assets that at one time were held in Rep. Guinta's name or as part of a
5 custodial arrangement on his behalf when he was a minor. RTB Resp., Ex. FL-002 to -035.
6 Respondents represent that these assets were eventually "merged" into the family pot between
7 1980 and 1994, although they provide no records in support of that contention. *Id.* at 4-5. They
8 initially estimated that the current value of the personal assets that Rep. Guinta contributed to the
9 pot had grown to approximately \$430,000, relying on the rate of growth of the Dow Jones
10 Industrial Average from 1980 to present. *Id.* at 6. Later Respondents asserted that Rep. Guinta
11 contributed an additional \$41,800 in assets to the family pot between 1987 and 1988, including
12 stock valued at \$5,600, but have provided no documentation concerning Rep. Guinta's original
13 ownership of those assets or demonstrating that he transferred them into any accounts held in his
14 parents' names. *See* Appreciation in Rep. Guinta's Contributions to Family Pot between 1980
15 and 1994, Respondents' Supplemental Submission (July 23, 2012) (the "Supplemental Chart")
16 (reflecting a total of \$141,832.67 in assets that Rep. Guinta claims he contributed to the family
17 pot, *i.e.*, the initially claimed \$100,032.67 in assets plus the subsequently claimed \$41,800 in
18 undocumented assets).⁸ Respondents estimated that the combined assets Rep. Guinta personally
19 contributed to the family pot would have been worth \$708,384.17 as of August 2010, this time
20 applying the rate of growth the S&P 500 experienced during the same period. *Id.*

21 Respondents contend that Rep. Guinta and his parents "always understood that a large
22 share of the pot belonged to Rep. Guinta, and in practical terms, Rep. Guinta had always been

⁸ Respondents' counsel submitted the Supplemental Chart at a meeting with Commission attorneys on July 23, 2012.

1 free to draw on the pot as the need arose." RTB Resp. at 10. They cite as examples checks that
2 his parents wrote payable to Rep. Guinta between 2001 and 2010 totaling at least \$57,050 to pay
3 for a variety of Rep. Guinta's personal expenses, such as his mayoral campaign, his credit card
4 bills, and his mortgages on two properties. *Id.* at 7-8.⁹

5 Respondents argue that, under applicable state law, Rep. Guinta held an equitable legal
6 interest in assets maintained under his parents name in the family pot sufficient to cover the
7 amounts he provided the Committee. They therefore contend that Rep. Guinta's contributions
8 consisted of the "personal funds" of the candidate under the Act and regulations.¹⁰ See RTB
9 Resp. at 10-11. They further assert that, had Rep. Guinta's parents refused to provide him with
10 access to the funds that ultimately he contributed to the Committee, Rep. Guinta could have sued
11 them in equity on an unjust enrichment theory and obtained the funds through imposition of a
12 constructive trust. *Id.* at 10.

13 D. Analysis

14 1. Applicable Law

15 The Act and Commission regulations prohibit each individual from contributing "to any
16 candidate and his authorized committee with respect to any election for Federal office which, in
17 the aggregate, exceed \$2,000" as indexed for inflation. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R.

⁹ Respondents do not claim that Rep. Guinta's two siblings — who also assertedly share an interest in the funds comprising the family pot — made any contributions to it, and Respondents affirmatively indicate that neither sibling made investment decisions for or actively managed the pot. *Id.* at 7. Respondents assert that the Guinta family "does not compartmentalize one child's interest to the exclusion of any other child's interest. To the contrary, the pot is and has always been thought of as a shared family resource kept in common for all family members." *Id.* at 6. Further, "[t]he family did not keep tabs of which dollars in the pot were Rep. Guinta's and which were his siblings'," *id.*, "nor did the family set up formal, legal trusts in the names of the children." *Id.* at 10.

¹⁰ We invited the Respondents to explain their contention that under relevant state law principles of equity and constructive trusts the funds Rep. Guinta obtained from his parents should be treated as personal funds within the meaning of 2 U.S.C. § 431(26). See Letter from Tracey L. Ligon, Att'y, FEC, to Cleta Mitchell, Esq., Foley & Lardner, LLP (Mar. 23, 2012). Respondents submitted a legal memorandum that essentially restates the argument set forth in their RTB Response. See Supp. Resp., Memorandum of Law Regarding Ownership of Funds (Apr. 23, 2012).

1 § 110.1(b)(1). In the 2010 election cycle, individuals were prohibited from contributing more
2 than \$2,400 per election.¹¹ The total aggregate amount an individual may contribute to all
3 federal candidates and political committees is also limited. 2 U.S.C. § 441a(a)(3); 11 C.F.R.
4 § 110.5. The Act defines the term "contribution" as any gift, subscription, loan, advance, or
5 deposit of money or anything of value made by any person for the purpose of influencing any
6 election for Federal office is a contribution. 2 U.S.C. § 431(8)(A)(i).

7 The Act prohibits a person from making a contribution in the name of another person or
8 knowingly permitting his or her name to be used to effect such a contribution. 2 U.S.C. § 441f.
9 The Act also prohibits a person from knowingly accepting a contribution made by one person in
10 the name of another person. *Id.*

11 Notwithstanding these prohibitions, a candidate for federal office is entitled to make
12 unlimited expenditures from personal funds. 11 C.F.R. § 110.10. The Act and Commission
13 regulations provide that the "personal funds of a candidate" are those amounts derived from "any
14 asset that, under applicable State law, at the time the individual became a candidate, the
15 candidate had legal right of access to or control over, and with respect to which the candidate had
16 — (i) legal and rightful title; or (ii) an equitable interest." 2 U.S.C. § 431(26); 11 C.F.R.
17 § 100.33.¹²

¹¹ See Price Index Increases for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 74 Fed. Reg. 7435, 7437 (Feb. 17, 2009).

¹² A candidate's personal funds also include "[i]ncome received during the current election cycle of the candidate," including salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before the beginning of the election cycle; income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary; gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 100.33(b).

2. Contributions to the Committee Were Not Rep. Guinta's "Personal Funds"

The assets that were the source of the \$355,000 in challenged contributions were not held in Rep. Guinta's name. Our investigation uncovered no evidence supporting the Respondent's theory that Rep. Guinta nonetheless held legal title to or an equitable interest in those funds. To the contrary, it remains undisputed that the funds in question were drawn from a bank account held in the names of Rep. Guinta's parents, there is no documentary support for the proposition that Rep. Guinta had a contractual or equitable right of access to those funds, and the accounts of witnesses with personal knowledge suggest that no such arrangement existed.

a. Rep. Guinta Held No Legal Title to the Funds

As Respondents recognize, the funds Rep. Guinta contributed to his campaign came from accounts held solely in his parents' names. Rep. Guinta did not pay any income taxes on dividends or interest earned from the relevant accounts. See Letter from Tracey L. Ligon, Att'y, FEC, to Cleta Mitchell, Esq., Foley & Lardner, LLP at 2 (Aug. 9, 2012). Nor did Rep. Guinta access or dispose of the funds directly. Rather, he requested the funds from his parents, and his parents in turn wrote checks payable to him. Consequently, the substantial weight of the credible evidence indicates that Rep. Guinta lacked legal title to the funds held in his parents' accounts.

b. Rep. Guinta Enjoyed No Equitable Interest in the Funds

Rep. Guinta's defense to the allegations rests almost entirely on the claim that he held an equitable interest in the funds in the so-called family pot. Essentially, he asserts that he and his parents agreed that the funds in the collection of assets controlled in the parents' names would be made available for his personal use and that of his siblings; that he contributed his personal funds to the pot based on that understanding; and therefore that he enjoyed an equitable interest in those funds, if not all of the funds in the family pot. The available information is inconsistent with the Respondents' theory, however, and the Respondents have failed to provide any

1 additional evidentiary support that suggests otherwise, despite our many efforts to obtain further
2 information from them.

3 Rep. Guinta stated in his affidavit that he had a "specific commitment and pledge [] from
4 [his] parents" that he would have access to the funds for his personal use. Rep. Guinta Aff. ¶ 10.
5 Respondents assert that the funds in the family pot were "regularly available" to Rep. Guinta and
6 his siblings, and that "they regularly used the shared family resources for personal expenses."
7 RTB Resp. at 2-3. We are not aware of any document, however, reflecting the existence of any
8 such alleged agreement or understanding between Rep. Guinta and his parents about his right to
9 access funds in his parents' accounts. Further, the available contemporaneous evidence tends to
10 conflict with the claim that an agreement concerning family assets held in common existed, and
11 statements of witnesses who would have personal knowledge of such an agreement conflict with
12 the claim that Rep. Guinta and his siblings were equitably entitled to funds in a family pot of
13 accounts held in his parents' names.¹³

14 First, regarding the funds that were the apparent source of the contribution to the
15 Committee, Richard and Virginia Guinta issued Rep. Guinta ten checks totaling \$381,000
16 between June 2009 and September 2010. See E-mail from Clea Mitchell, Esq., Foley &
17 Lardner, LLP, to Tracey L. Ligon, Att'y, FEC (Mar. 6, 2012, 03:50 EST). According to
18 Respondents' counsel, these funds were used "in whole or in part" for Rep. Guinta's campaign.
19 *Id.* On nine of the checks, totaling \$359,000, Virginia Guinta wrote "loan" above the memo line,
20 suggesting her understanding that Rep. Guinta was borrowing funds from her.

¹³ Respondents concede that the calculations of claimed contributions from Rep. Guinta to the family pot "reflect the *ex post facto* estimations of counsel. . . . The Guinta family, to be clear, did not think of the family pot in such formalistic terms." RTB Resp. at 6.

1 Virginia Guinta confirmed her understanding that the loans would be repaid.¹⁴

2 Such an understanding is inconsistent with the proposition that Rep. Guinta and his parents
3 understood that Rep. Guinta had a legal or equitable right to dispose of the funds as he wished.

4 Virginia Guinta described the
5 basis for providing those funds in terms that are at odds with the "family pot" concept described
6 by the Respondents. She stated that she and her husband "decided \$1 million of wealth would be
7 available to each of their three children."

8 Virginia Guinta did not
9 characterize the funds as owned by Rep. Guinta or as having been obtained and maintained in
10 her bank accounts because of any agreement with Rep. Guinta. Thus, when Rep. Guinta sought
11 funds for his federal campaign, Virginia Guinta "deducted this amount from his \$1 million
12 allotment." She further stated that the ownership of the money was "fungible, not
13 certain."¹⁵

14 Similarly, Christine Guinta-Raymond, Rep. Guinta's sister, represented that she was
15 unaware such a family pot existed, let alone that she or either of her brothers enjoyed a legal or
16 equitable right to access those funds:

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¹⁴ Counsel orally advised us that Rep. Guinta's mother did not know why she wrote "loan" on the checks.

¹⁵ Virginia Guinta claimed that she had learned that Rep. Guinta could hold debt reduction fundraisers to recover loans to his campaign and understood that, if he did so, he would "put the money back where it came from."

Respondents here do not claim that the funds in question were Rep. Guinta's "personal funds" because they were gifts to him of a personal nature that customarily had been received prior to the beginning of the election cycle — an argument one might expect given the familial source of the funds here. See 11 C.F.R. § 100.33(b)(6). To the contrary, Respondents insist that Rep. Guinta had a legally-enforceable, equitable interest in the funds, *i.e.*, they were rightfully his, not gifts. Accordingly, Commission precedent concerning treatment of intra-familial gift giving is inapplicable here. Nor do Respondents claim the funds were income from a trust established before the beginning of the election cycle. *Id.* § 100.33(b)(4). Indeed, they represent that Rep. Guinta's parents never "set up formal, legal trusts in the names of the children." RTB Resp. at 10.

1 Raymond did not know of a trust set up by her parents where she and/or
2 her brothers were the beneficiaries. She was not aware of any funds where
3 Frank Quinta could claim he had an equitable interest.

4 16

5 Bank records relating to the accounts that Respondents characterize as part of the family
6 pot also show that other distributions to Rep. Quinta may have been made in the form of "loans,"
7 i.e., three checks totaling \$8,400 with "loan" on the memo line, a \$3,100 check with "Youville
8 loan" on the memo line, and a \$2,700 check with "student loan" on the memo line.¹⁷ These
9 additional transactions — characterized at the time as loans — further reinforce the view that
10 Rep. Quinta held no legally-enforceable or equitable right to obtain and use the funds in his
11 parents' financial accounts without incurring an obligation to repay them.

12 The unsupported claim that Rep. Quinta himself contributed significant sums to the
13 accounts that now make up the family pot is also unpersuasive. Respondents produced
14 documents reflecting only that, between 1980 and 1994, when Rep. Quinta was a minor or young
15 adult, various assets totaling approximately \$100,000 were held either in his name or on his
16 behalf. RTB Resp. at 3-5; Exs. FL-002 to -024. Respondents subsequently claimed that Rep.
17 Quinta personally held title to another \$41,800 in assets prior to 1988. *See* Supplemental Chart.
18 But we are aware of no records that indicate that any of those assets were in fact transferred or
19 merged into his parents' accounts. Respondents have not provided us with any such
20 documentation.

21 Respondents' assertion that Rep. Quinta's contributions to the family pot increased in
22 value over time to \$708,384.¹⁷ also lacks merit. Rep. Quinta obtained the funds that he

¹⁶ Rep. Quinta has one other sibling, Eric Quinta.

¹⁷ We do not have copies of these checks because the Respondents only permitted us to inspect them.

1 contributed to the Committee from accounts in his parents' names that appreciated, if at all,
2 according to the financial terms that were applicable to those accounts. *Id.*¹⁸

3 Finally, for the proposition that Rep. Guinta held an equitable right to the funds under
4 state law, Respondents cite cases involving claims that a party defrauded the complainant of
5 specific funds held for the complainant in trust, or that a party violated a verifiable obligation to
6 take action to the benefit of the complainant.¹⁹ Neither situation applies here. There is no
7 indication that Rep. Guinta's parents fraudulently obtained funds from him, and for the reasons
8 described above, the theory that Rep. Guinta's parents were essentially the custodians of funds
9 belonging to him and his siblings is inconsistent with the available factual record. Further, even
10 under Rep. Guinta's view of the arrangement, his parents were entitled to use all of the funds in

¹⁸ Several assets Respondents identify as the personal contributions of Rep. Guinta to the family pot present additional problems. For instance, Respondents claim that Rep. Guinta contributed \$4,250 to the pot that he obtained, after legal fees, as settlement for personal injuries while a teenager. RTB Resp. at 3-4. Those funds, however, were paid to both Rep. Guinta and his father as Rep. Guinta's *Guardian ad Litem* to release their respective claims. See RTB Resp., FL-013. Respondents also claim that Rep. Guinta alone contributed \$20,000 and \$19,500 in proceeds from the sale of two properties that his parents held in trust for him; his parents, however, also held title to the properties individually. See RTB Resp. at 4-5, FL014-16, FL021-23. Respondents also include \$25,000, as well as the total estimated increase in its value over time, that they represent was set aside by Rep. Guinta's parents for the benefit of Rep. Guinta and his siblings, not for Rep. Guinta alone. See Supplemental Chart.

Further, even were the Commission to accept the otherwise unsupported assertion that Rep. Guinta and his parents had a preexisting understanding that funds in accounts held in his parents' names legally or equitably belonged to him, the question remains what amount Rep. Guinta already received from the family pot before obtaining the additional \$355,000 he contributed to the Committee. We asked Respondents to identify prior disbursements from the family pot to Rep. Guinta, but Respondents refused to provide that information. Respondents claimed that the information we sought constitutes attorney work product. See Letter from Cleta Mitchell, Esq., Foley & Lardner, LLP, to Tracey L. Ligon, Att'y, FEC at 2 (Jan 7, 2013) (Req. for Legal Determination under FOIA Exemption). We clarified that we sought only facts concerning relevant financial transactions, not counsel's work product. See Letter from Tracey L. Ligon, Att'y, FEC, to Cleta Mitchell, Esq., Foley & Lardner, LLP at 2 (Apr. 19, 2013). Respondents nonetheless refused to provide the requested information.

¹⁹ See RTB Resp. at 11, citing *Flanigan v. Munson*, 818 A.2d 1275, 1281 (N.J. 2003) (finding unjust enrichment and imposing a constructive trust in favor of children where one parent failed to comply with a divorce agreement that obligated each parent to name their children as beneficiaries to any life insurance); *In re Estate Cass*, 719 A.2d 595, 598 (N.H. 1998) (approving creation of a constructive trust for mother where son had exerted undue influence over her — giving her false information about trust assets before she transferred property out of trust to him — and thus may have been unjustly enriched); *Marioni v. Roxy Garments Delivery Co.*, 9 A.3d 607, 611 (N.J. Super. 2010) (holding that constructive trustee was not entitled to profit due to its own wrongdoing in depriving plaintiff of the property he had contracted to buy); *Hatch v. Rideout*, 65 A.2d 702, 704 (N.H. 1949) (holding that a trust in favor of children of a decedent as against defendant in whose name decedent bid in realty at mortgage foreclosure sale could arise by operation of law only in event of fraud by defendant that would warrant imposition of a constructive trust).

1 the accounts that comprise the family pot for other members of the family, also undermining the
2 claim that Rep. Guinta could have obtained those funds in equity based on an unjust enrichment
3 theory.²⁰

4 In sum, the facts uncovered during our investigation resemble those presented in MUR
5 6417 (Jim Huffman for Senate). In that matter, the candidate loaned funds to his campaign out
6 of a joint account he held with his wife, disclosing them as "personal funds." The funds in that
7 joint account, however, had been transferred from his wife's solely-owned trust account for the
8 purpose of making the loans to the candidate's campaign committee. Conciliation Agreement at
9 3-4, MUR 6417. Respondents stated that, since their marriage, Huffman and his wife had not
10 considered the wife's trust account "any differently than money in their joint account," and had
11 transferred funds from the trust account to their joint account for "family purposes," including
12 home renovations, car purchases, and family travel, payment of federal and state taxes from their
13 joint returns and the depositing of joint tax refunds. See Factual & Legal Analysis at 6, MUR
14 6417. Nonetheless, after the Commission found reason to believe, the Respondents admitted the
15 violations, conciliated, and paid a civil penalty. Huffman also contributed \$1.3 million from his
16 personal funds to his campaign committee, and the committee amended its reports and refunded
17 \$1.3 million to Huffman's wife. See Conciliation Agreement, Section IV ¶ 15.²¹

²⁰ In the absence of unjust enrichment, a constructive trust claim would fail under the laws of both New Hampshire (where Rep. Guinta currently lives) and New Jersey (where Respondents claim that most of the transfers into the family pot took place). See *In re Estate of Cass*, 719 A.2d 595, 598 (N.H. 1998) ("A constructive trust may be imposed when clear and convincing evidence shows that a confidential relationship existed between two people, that one of them transferred property to the other, and that the person receiving the property would be unjustly enriched by retaining the property, regardless of whether the person obtained the property honestly."); *Flanigan v. Munson*, 818 A.2d 1275, 1281 (N.J. 2003) ("[O]ur courts employ a two-prong test when determining whether a constructive trust is warranted in a given case. First, a court must find that a party has committed a 'wrongful act.' The act, however, need not be fraudulent to result in a constructive trust; a mere mistake is sufficient for these purposes. Second, the wrongful act must result in a transfer or diversion of property that unjustly enriches the recipient.").

²¹ As discussed in the First GCR, Respondents also argue that prohibiting candidate contributions of funds obtained through intra-family transfers — which arguably do not corrupt or appear to corrupt — would create constitutional concerns. RTB Resp. at 10, 13. In *Buckley v. Valeo*, 424 U.S. 1, 51 n.57 (1976), however, the

* * *

For the reasons stated above, following our investigation into the source and nature of the funds at issue, we conclude that the substantial weight of the available credible evidence supports the Commission's finding at the reason-to-believe stage that the \$355,000 contribution of Rep. Guinta to the Committee was not made with the "personal funds of the candidate" under the Act and Commission regulations. We therefore recommend that the Commission enter into pre-probable cause conciliation with Frank Guinta and the Committee. Given the nature of their role, , we further recommend that the Commission exercise its prosecutorial discretion and take no action as to Richard Guinta and Magdalene Virginia Guinta, other than to send them a caution letter with respect to violations of 2 U.S.C. §§ 441a and 441f, and close the file as to them.²² See *Heckler v. Cheney*, 470 U.S. 821 (1985); MUR 5646 (Burchfield) (taking no further action other than an admonishment against cooperative committee treasurer who was unlikely to serve as treasurer in the future).

Supreme Court emphasized that the legislative history of the Act supports applying the same contribution limits to members of a candidate's immediate family as apply to the general public. The Court opined that "[a]lthough the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53 n.59. Thus, Respondents' assertion should be rejected. See, e.g., Factual and Legal Analysis at 8-10, MUR 6447 (Steele for Maryland, Inc., *et al.*) (finding reason to believe the committee knowingly and willfully violated the Act by accepting excessive contributions from the candidate's sister).

²² We made no recommendations as to Rep. Guinta's parents in the First GCR.

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IV. RECOMMENDATIONS

1. Enter into conciliation, prior to findings of probable cause to believe, with Frank Guinta, and Friends of Frank Guinta and Bradley T. Crate in his official capacity as treasurer.
2. Take no action as to Richard Guinta and Magdalene Virginia Guinta other than send a caution letter with respect to violations of 2 U.S.C. §§ 441a and 441f, and close the file as to them.
- 3.
4. Approve the appropriate letter.

Date

2/11/14

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